



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CIVIL ACTION NO. 3:20-cv-415-DPJ-FKB

REAL PROPERTY KNOWN AS
115 ROSEDOWNE BEND, MADISON,
MISSISSIPPI 39110

DEFENDANT PROPERTY

**APPLICATION TO FILE GOVERNMENT'S OPPOSITION TO CLAIMANTS' JOINT
MOTION TO LIFT THE STAY UNDER SEAL**

The United States of America hereby applies to this Court for an order permitting the filing of the Government's Opposition to Claimants' Joint Motion to Lift the Stay under seal. In addition, the United States asks that this application likewise be filed *under seal*.

INTRODUCTION

The Verified Complaint for Forfeiture *In Rem* is currently under seal. There is an Agreed Protective Order that dictates that if information from the complaint is referenced in court documents, the filing must be under seal. The Government's Opposition to Claimants' Joint Motion to Lift the Stay references materials in the complaint. Further, the Government received permission to include information pertaining to a grand-jury subpoena in the Government's Opposition to Claimants' Joint Motion to Lift the Stay. The Government has done so. The Government indicated that it would request that the motion be sealed because it contains materials that otherwise contain information only authorized for release to the court and parties to the case. The Government also indicated that it would request in its motion to seal that that any reply to the

Government's Opposition to Claimants' Joint Motion to Lift the Stay that references the grand-jury subpoena shall be under seal as well for the same reason.

LEGAL AUTHORITY

Federal courts are empowered to seal documents in appropriate circumstances. *Cf.* Fed. R. of Crim. P. 6(e)(4) (sealing of indictments). The Supreme Court has noted that “[e]very Court has supervisory power over its own records and files, and access has been denied where Court files might have become a vehicle for improper purposes.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978). Moreover, federal district courts have the inherent power to seal affidavits filed with search warrants in appropriate circumstances. *See Washington Post v. Robinson*, 935 F.2d 282, 289 n. 10 (D.C. Cir. 1991); *Offices of Lakeside Non-Ferrous Metals, Inc. v. United States*, 679 F.2d 778 (9th Cir. 1982); *United States v. Agosto*, 600 F.2d 1256 (9th Cir. 1979). This inherent power may be appropriately exercised when disclosure of an affidavit or declaration would disclose facts that would interfere with an ongoing criminal investigation. *See Shea v. Gabriel*, 520 F.2d 879 (1st Cir. 1979). Rule 5 of the Federal Rules of Civil Procedure grants federal Courts supervisory power over the filing of pleadings. *See* Fed. R. Civ. P. 5.

DISCUSSION

The sealing of the Government's Opposition to Claimants' Joint Motion to Lift the Stay is required by the Agreed Protective Order. Further, sealing is required because the motion contains grand-jury information authorized only for limited disclosure.

CONCLUSION

For these reasons, the United States of America respectfully requests that the Government's Opposition to Claimants' Joint Motion to Lift the Stay be filed under seal, this application be filed under seal, and any reply filed by the Claimants shall be filed under seal if it references the grand-jury subpoena.

Dated: Friday, September 18, 2020

Respectfully submitted,

Deborah Connor, Chief
Money Laundering and Asset Recovery Section
Criminal Division
U.S. Department of Justice

By:



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Trial Attorney
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CERTIFICATE OF SERVICE

I, Kerry Blackburn, hereby certify that a filed copy of this motion will be provided to counsel for Theodore Marvin DiBiase Jr., Scott Gilbert, and Kristen DiBiase, Mark Ray, via email.

A handwritten signature in blue ink that reads "Dave Fuller for". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Kerry Blackburn